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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,560	08/09/2001	Jay D. Hodson	24180-027007	6991

7590 10/28/2003  
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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

3KB

**Office Action Summary**

Application No.

09/925,560

Applicant(s)

HODSON ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 07 February 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 9-24 are rejected under the judicially created doctrine of obviousness-

type double patenting as being unpatentable over claims 1-15 of U.S. Patent No.

6,316,036. Although the conflicting claims are not identical, they are not patentably distinct from each other because in both the instant invention and that of the '036 patent a process is described wherein a package is formed by providing a sheet of plastic packaging material having two sides and top edge and a bottom edge; attaching a heat sealable tear tape to the plastic material; placing a food product on the plastic packaging material, folding the plastic packaging material over the food product such that the top edge and bottom edge are aligned, sealing the folded plastic packaging material along the two sides and along the aligned top and bottom edges to form a package and providing an end on the tear tap which extends beyond the sealed sides of the package for pulling the tear tape to open the package; wherein the heat sealable tear tape forms a hermetic seal on the packaging. The difference between the '036 and

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that of the instant application is that the '036 patent claims broadly attaching a heat sealable tear tape to the plastic packaging. In the instant application, the heat sealable tear tape comprises a first heat sealable layer on a first side of the heat sealable tear tape and a second heat sealable layer on a second side of the heat sealable tear tape, the '036 of heat sealable tear tape would read on this more specific type of heat sealable tear tape and to use a specific construction of a heat sealable tear tape where broadly a heat sealable tear tape has been taught and described would have been an obvious substitution or obvious selection where a heat sealable tear tape has been taught. Thus rendering the invention as a whole obvious to the ordinary artisan.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hodson et al. teach a heat resistant and heat sealable tear tape that can be used with a plastic package. The claims are directed only to the heat sealable tear tape. The tear tape includes a plurality of layers wherein of the layers is a core layer comprising a oriented film, a first outer layer on the first side of the tear tape wherein the first outer layer comprises a first polymer sealant and a second outer layer on the second side of the tear tape wherein the second outer layer comprises a second polymer sealant and first and second adhesive material disposed between the core layer and respective polymer sealant material. Cooper et al. teach a tear tape for attachment to a polymeric packaging film comprising a thermoplastic polymeric substrate having a surface thereof a layer of sealing resin comprising a ethylene vinyl acetate copolymer and a plasticizer therefor. Forman teaches a resealable package and apparatus for making the resealable package. Gehrke et al. teach a polymeric

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laminate for use in polymeric films and packaging material. Pinchen et al. teach a package with a tear tape and provided as hermetically sealed package having a tear tape attached thereto.

4. With a properly executed and timely filed terminal disclaimer the claims are free of the prior art as the method or making a heat sealable and heat resistant tear tape for a food package has not been taught either singularly or in combination by the prior art.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761